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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,792	03/07/2001	John C. Evans	GME-138/119	5511

16

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EXAMINER
WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/800792	EVANS
Examiner	**Group Art Unit**
S. WEINSTEIN	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☑ Responsive to communication(s) filed on 2/19/03 + 6/17/03.

☑ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☑ Claim(s) 1-36 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-36 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☑ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

Applicant's IDS filed June 19, 2003 has been received. These references were originally brought to applicant's attention by the examiner.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over San Francisco Examiner in view of www.beyondtherainbow2oz.com., further in view of Packaging Week (12(33) 02/20/97, page 10)), Atlanta Constitution (Tuesday 3/30/99, P.D. 2), Golub (Russia 2111908), Forbes (11/08/93, page 67), The Charlotte Observer (3/4/93, page 1E), the Seattle Times (12/30/93, page B1), Akron Beacon J. (11/11/92, page C1), Star Tribune (10/17/94, page 1E), further in view of Newman (3,624,787), Beall (3,956,510) and Ruff (3,788,463).

In regard to claim 1, as evidenced by the San Francisco Examiner and the art taken as a whole, it was conventional to sell cotton candy in containers. The San Francisco Examiner states that Kenneth Feld's "The Wizard of Oz on Ice was selling to the public, a puff of cotton candy set in a plastic, Wizard of Oz Souvenir bucket. A bucket clearly has rigidity and is self-supporting. Claim 1 also recites that the container body is sealed. As evidenced from the website www.beyondtherainbow2oz.com,

which sells collectibles, The Wizard of Oz on Ice, Souvenir bucket, which is clearly shown in the middle of the photograph, clearly has a sealing lid. In fact, it is clearly apparent that the bucket is a typical conventional type of plastic bucket or pail of the so-called "Tupper-ware" type that would employ some type of snap fit closure lid. As noted in the last Office action, self-supporting, rigid plastic containers would have greater gas impermeability than thinner flexible bags of the same material so that the container that contains the cotton candy described in the art would clearly reduce moisture contact and maintain freshness (by reducing moisture permeability) compared to applicant's disclosed prior art bags. Actually, applicant's admission of the prior art failed to disclose that the prior art recognized that higher barrier bags greatly extended the shelf life of cotton candy as evidenced by Packaging Week and the Atlanta Constitution. Thus, even if the Wizard on Ice Cotton Candy buckets were not sufficiently impermeable, it would have been obvious to make them thicker or select the appropriate more impermeable material-both well known expedients-if necessary, to provide sufficient impermeability for longer shelf life. Also, as for the issue of protecting against compression, as noted above, any self supporting plastic tub would provide greater protection against compression, relative to a flexible bag. As also noted above, plastic containers, tubs or pails (whatever one chooses to call them) are notoriously old in the food art having been used to package ice cream, fresh cheeses, soups, appetizing, etc. These plastic container/lid combinations are sealed with snap-fit Tupper-ware type structure. Clearly, applicant is not the inventor of the container per se as evidenced by the plethora of products packed in such containers (including cotton candy-San Francisco Examiner). Golub is relied on as further evidence of the art recognized problem of avoiding compressing cotton candy and clearly solves

the problem by providing a sufficiently rigid container (apparently aided by pressurized air). Applicant has argued previously that Golub does not recognize the moisture problem. This urging is not convincing because, the claims do not recite that the container is evacuated so that applicant's container has air and there is nothing to suggest that Golub's air is any more humidified than that of applicant's. In fact, it could be less humidified. Forbes, the Charlotte Observer, Seattle Times, Akron Beacon J. and Star Tribune are relied on to as further evidence that throughout at least the 1990's the marketing of cotton candy in buckets or pails, or whatever one chooses to call the container, was notoriously well known at various settings. See In re Gorman, 18 USPQ 2d 1885 wherein the Court noted that where teachings relied upon to show obviousness were repeated in a number of references, the conclusions of obviousness was strengthened. Finally, Newman, Beall and Ruff are relied on as further evidence of plastic containers with covers. Note, Newman discloses a conventional snap-fit seal, Beall is concerned with avoiding damage to the products and Ruff further discloses container stacking.

In regard to the dependent claims, the rejection, employing the art taken as a whole, has addressed most of the issues above. In regard to the gas transmission (claim 2) once it was known that gas transmission is a problem for shelf life, the particular gas transmission selected would have been an obvious determination and an obvious function of economic and other factors. As noted above, applicant appears to be employing a conventional plastic container of conventional thickness, not unlike that shown in the art taken as a whole, as disclosed by the San Francisco Examiner and

shown in the Internet site. As was also noted previously, to provide a container with at least some degree of transparency and graphics is, of course, notoriously old. Ice cream containers or tubs have been marketed that way for many years.

Applicants remarks filed February 19, 2003 have been considered but are moot in view of the new rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the

organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh
August 26, 2003

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
8/26/03